

Status **Draft** PolicyStat ID **17061846**

San Bernardino County Employees'
Retirement Association

Origination	11/7/2019
Last Approved	N/A
Effective	N/A
Last Revised	N/A
Next Review	N/A

Area	Benefits
Applicability	SBCERA systemwide

Requests and Appeals for Pension Benefits

BENEFITS POLICY NO. 025

I. Purpose

The purpose of this policy is to establish a clear and fair process for SBCERA members, retirees, and beneficiaries to appeal decisions related to their benefits. This policy outlines the criteria for what constitutes a valid benefits appeal, the procedures for submitting and reviewing appeals, and the responsibilities of all parties involved. By providing a structured framework for resolving disputes, this policy ensures transparency, consistency, due process, and equitable treatment of all individuals within the retirement system.^[i]

II. Definitions

- A. Benefits Appeal: A formal request to review and reconsider a decision related to the eligibility, calculation, or distribution of retirement benefits.
- B. Non-Appealable Issue: Matters that fall outside the defined scope of a benefits appeal and are not subject to review under this policy.
- C. Governing Plan Documents: County Employees Retirement Law (CERL), Internal Revenue Code, SBCERA Polices, including Procedures, California Constitution, and statutes.
- D. Appellant: Member, Retiree, or Beneficiary, including an eligible surviving spouse who requests an appeal based on an appealable issue cited in Section III.
- E. SBCERA's Counsel: The attorney acting as an advocate for the maintenance of the Board's decision or otherwise opposing the Appellant's request for benefits excluding the Chief Counsel or designee whose duties involve the rendering of legal advice to the Board in a particular case.

III. Benefits Appeal

A benefits appeal may be filed for the following reasons:

1. **Eligibility Determinations:** Disputes regarding whether a member or beneficiary meets the criteria for retirement benefits, i.e. service retirement allowance, continuance, or survivor benefits, including SBCERA reciprocity determinations, errors in service credit, or age requirements.
2. **Benefit Calculation Errors:** Claims of errors in the calculations of benefits, such as incorrect service years, final average compensation calculations, or application of benefit formulas (Tier 1, Tier 2, safety, and general).
3. **Denial of Benefits:** Where a member or beneficiary has been denied benefits (i.e. service retirement, continuance, or survivor benefit) they believe they are entitled to under SBCERA plan documents.
4. **Nonpensionable Compensation:** Pay received by a member that is not compensation under Government Code section 31460 and is expressly excluded as compensation earnable (Government Code section 31461) and/or pensionable compensation (Government Code section 7522.34).
5. **Misapplication of Plan Rules:** Allegations that SBCERA rules, policies, or procedures were not correctly applied in determining benefits.

IV. Non-Appealable Issues

Non-appealable issues include, but are not limited to the following issues and will not be considered under this policy:

1. **Plan Design Disputes:** Challenges to the structure, provisions, or design of the retirement plan, including benefit formulas, contributions rates, interest rate and crediting, or eligibility requirements mandated under SBCERA Governing Plan Documents.
2. **Investment Performance:** Complaints related to the performance of investments or financial condition of SBCERA.
3. **Tax Consequences:** Issues related to the tax treatment of benefits, as these are governed by external tax laws and regulations, including SBCERA Policies.
4. **Administrative Delays:** Grievances about delays in processing or payments unless these delays directly impact the benefit determination.
5. **Communication Issues:** Complaints about clarity or frequency of communication from SBCERA, unless they directly affect the calculation or distribution of benefits.
6. **Actuary Advice:** Benefits based on the advice of SBCERA's Actuary.
7. **Systemic benefit changes that affect a group of retirees.** Individuals do not have an appeal right that have an effect on all or substantial group of members and/or retirees.
8. **Decisions made by other agencies or reciprocal retirement agencies.**
9. **Error corrections made in accordance with IRS Rules, along with corrective distributions due to a system error as required by law and the Internal Revenue Service.**

V. Appeal Process for Benefits Appeal

A. Initial Benefits Appeal Determination

Appellant asserts, orally or in writing, one or more appealable issues cited in Section III. Staff shall use its best efforts to provide a written determination within 30 days of the member's request that either approves or denies the request supported by the law. The Appellant shall have 30 days from the date of the letter to submit a written request to appeal the initial determination to the Chief Executive Officer. If no appeal is received within 30 days from the date of the staff letter, the Chief Executive Officer shall provide a written notice to the Appellant that the initial determination is being upheld and is final.

B. Appeal to SBCERA Chief Executive Officer

Appellant shall submit a written appeal within 30 days of the initial determination to the Chief Executive Officer including a clear explanation of the issue, supporting documentation, and the specific relief being sought. As part of the review and determination, Chief Executive Officer may do the following:

1. Request additional information from the Appellant.
2. Extend the time to submit an appeal.
3. Extend the time for the Appellant to submit additional evidence.
4. Refer the matter to a fact-finding administrative hearing.

If not referred to an administrative hearing, the Chief Executive Officer shall provide a written determination to the Appellant that either approves or denies the appeal.

C. Appeal to the SBCERA Board of Retirement (Board)

In order to appeal to the Board after the CEO's determination, the following is required:

1. The Appellant has 30 days to appeal, in writing, the Chief Executive Officer's determination to the SBCERA Board of Retirement (Board). As part of the written appeal to the Board, the Appellant has the opportunity to submit additional information, written argument, and any other relevant evidence that should be considered by the Board.
2. SBCERA's Counsel has 30 days to submit a reply brief with supporting evidence to be considered by the Board.
3. If a timely written appeal is received with supporting evidence, within 30 days of receipt of SBCERA Counsel's reply brief, the Chief Executive Officer shall place the matter on the agenda for the next regularly scheduled Board meeting for the Board's consideration.

Under this provision, the CEO shall have the authority, upon the showing of good cause to extend the time to submit additional evidence and briefs.

The Chief Executive Officer or designee will provide copies of the Appellant's written appeal and supporting documentation, along with SBCERA Counsel's Brief, and administrative evidentiary documents to the Board. The Chief Executive Officer shall provide notice to Appellant of the Board meeting where the Board will consider the Benefits Appeal. The Appellant may attend the Board meeting. The Appellant and SBCERA's Counsel shall present oral argument to the Board with each

having four (4) minutes.

As part of the consideration of the appeal matter, the Board may do the following:

- A. Take action on the matter that either approves or denies the appeal.
- B. Refer the matter to an administrative hearing if the matter has not already been referred to an administrative hearing by the CEO.
- C. Require Appellant and/or direct staff to provide additional information regarding a specific issue connected to the appeal.

VI. Matter Referred to an Administrative Hearing

The Board or Chief Executive Officer may refer the Benefits Appeal to an administrative hearing. Such administrative hearings shall be conducted under the adopted SBCERA's Rules and Procedures for Administrative Hearings (to be adopted). When a recommendation is returned by the appointed hearing officer presiding over the administrative review, the Board may take action on the recommendation in accordance with Government Code section 31534.

VII. Failure to Appeal and Exhaust Administrative Remedies

In the event the Appellant fails to appeal the staff or CEO's determination, then the determination will be placed on the Board's next consent agenda with a recommendation to adopt the determination. The Board's adoption of the determination shall be final. Following final decision on disputed matters, the CEO or designee shall send to the member written notice of their appeal rights accompanied by a proof of service.

SBCERA shall assert that the Appellant failed to exhaust all its administrative remedies as an affirmative defense to any petition for writ of mandamus.

VIII. Board Decision Upon Hearing Appeal

Judicial review of final retirement decisions shall be subject to the Code of Civil Procedure sections 1094.5 and 1094.6. Judicial review of final compensation earnable and/or pensionable compensation decisions shall be subject to Code of Civil Procedure section 1085.

[1] (a) Since its inception as incorporated in the SBCERA By-Laws, later in Benefits Policy No. 025 Issue No. 1.0 adopted by the Board on April 7, 2016, this policy remains the mechanism for all members to

appeal the change for any pension benefits.

(b) As a supplement of appeal rights under this Policy, the Board adopted Resolution 2020.5, and 2020.8 and implemented an appeal process to ensure due process, as well as an expedient determination concerning an appeal brought by an affected member or SBCERA participating employer on behalf of its employees for purposes specifically related to an appeal of PEPRA excluded item, incorrect data included in the calculation of a member's benefit, or the assertion the member actually was retired before the effective date of the law that SBCERA is applying to him or her. Resolution 2020.8.01 prescribes the steps of such appeal effective October 1, 2020 and as amended December 3, 2020.

(c) The decision in *Alameda* held that retirement boards have no discretion to include pay items Compensation earnable that are excluded under the CERL or PEPRA, or other applicable statutes. In accordance with Government Code section 31461, compensation earnable by a member means the average compensation as determined by the Board. Under Benefits Policy No. 026, the Board adopted a process by which pay items are reviewed and determined to be compensation earnable and/or pensionable compensation, effectively immediately upon the determination and ratification by the Board.

Approval Signatures

Step Description	Approver	Date
HR Final Review & Distribution	Iliana Torres	1/13/2023
Board Approval - Policy Owner Quality Assurance Review	Barbara Hannah: Chief Counsel	1/3/2023